

# **EXHIBIT 6**

Patrick Francis Byrne CORRECTED  
January 17, 2022

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

JUSTIN GUY, individually on  
behalf of himself and others  
similarly situated,  
Plaintiff,

-vs-

Case No. 20-CV-12734

ABSOPURE WATER COMPANY, LLC,  
a Domestic Limited Liability  
Company,

Hon. Mark A. Goldsmith

Defendant.

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DEPONENT: VIDEOTAPED DEPOSITION OF PATRICK FRANCIS  
BYRNE APPEARING REMOTELY FROM OAKLAND  
COUNTY, MICHIGAN

DATE: Monday, January 17, 2022

TIME: 9:02 a.m.

REPORTER: John J. Slatin, RPR, CSR-5180,  
Certified Shorthand Reporter,  
Appearing Remotely From  
Oakland County, Michigan

(Appearances listed on page 2)

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1 Q. All right. Let me ask you this way: Are you aware of  
2 anything missing from this answer to Interrogatory  
3 Number 13?

4 A. No.

5 Q. Okay. So, the exemption -- let's -- let's dive in.

6 The exemption that you are relying on in this  
7 matter as the basis of not paying the drivers overtime  
8 compensation is the Motor Carrier Act exemption;  
9 correct?

10 A. Yes.

11 Q. Okay. And, obviously, that is the only exemption that  
12 you're relying on; correct?

13 A. I don't know.

14 Q. What's that?

15 A. I don't know.

16 Q. Are you aware of that you're relying on any other  
17 exemption?

18 A. I don't -- I don't -- I don't know.

19 Q. So, you're not aware that you're relying on any other  
20 exemption; correct?

21 A. I'm not clear what that question meant.

22 Q. It -- it's not a trick question.

23 The -- the reason you haven't paid your drivers  
24 overtime is because you're taking the position that  
25 they're exempt under the Motor Carrier Act; correct?

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1 A. Yes.

2 Q. And that's the only reason you did not pay them overtime  
3 compensation, because you believe they're exempt under  
4 the Motor Carrier Act; correct?

5 A. I don't know that that's the only reason.

6 Q. Is there any other reason that you're aware of?

7 Again, it's not a trick question.

8 A. That I'm aware of, no.

9 Q. Okay. So let's talk about the Motor Carrier Act  
10 exemption.

11 Absopure is a -- is a private motor carrier; is  
12 that correct?

13 A. That's correct.

14 Q. Okay. And Plaintiff worked for Defendant as a truck  
15 driver; correct?

16 A. He -- he was a sales and service specialist trainee,  
17 which falls under your definition of truck driver.

18 Q. Okay. So, for -- for purposes of this discussion, for  
19 the deposition, let's talk about the title; okay?

20 A. Okay.

21 Q. So, you are aware that there are documentations that  
22 refer to him as -- under various names, which includes  
23 "driver" or "delivery driver"; correct?

24 A. Yes.

25 Q. And you are aware that the job postings that were

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1 listed, to ask to fill that position, were for delivery  
2 drivers; correct?

3 A. Some, I believe, yes.

4 Q. Okay. And you are aware that the job requirements  
5 concerning a delivery were -- were concerning delivery  
6 of -- of goods; correct?

7 A. Partially, yes.

8 Q. Okay. I've -- he's never received any sales training;  
9 correct?

10 A. I don't know.

11 Q. Okay. You're not aware of any sales training provided  
12 to the delivery drivers; correct?

13 A. I'm not sure what you mean by "training."

14 Q. Have they been provided any formal sales training?

15 I mean, I can -- I can attest to you that you've  
16 provided their "training material" and they do not  
17 include any sales training material.

18 So, I just want your confirmation that they did not  
19 receive any sales training.

20 Is that correct?

21 A. They -- part of their mentoring from their supervisors  
22 would include salesmanship.

23 Q. Okay. But you have no evidence to support that  
24 statement; correct?

25 A. Documents? No.

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1 and service associates"; correct?

2 A. "Sales and service specialists," yes.

3 Q. Okay. And -- okay.

4 Oh, I'm sorry. I -- I opened this background  
5 backwards.

6 On Bates 366, what's the title in this job posting?

7 A. "Entry-level route delivery."

8 Q. Okay. And for Bates 364, what's the title in this  
9 posting?

10 A. "Entry-level route delivery."

11 Q. Okay. And for Bates 362, what's the title of this  
12 posting?

13 A. "Entry-level route delivery."

14 Q. Okay. And for Bates 360, what's the title of this  
15 posting?

16 A. "Entry-level route delivery."

17 Q. Okay.

18 I mean, we can keep going.

19 Bates 358, what's the title of this posting?

20 A. "Entry-level route delivery."

21 Q. Okay. And for Bates 356, what's the -- what's the title  
22 of this posting?

23 A. "Entry-level route delivery."

24 Q. Okay. Why don't we do one more.

25 Bates 354, what's the level of this post- -- what's

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1 the title of this posting?

2 A. "Entry-level route delivery."

3 Q. Okay. Very good.

4 And all of the individuals in these job postings  
5 are under what you -- under the title of what you  
6 referred to as "sales service specialists"; correct?

7 A. That's correct.

8 Q. Okay. And they were all compensated in the same manner;  
9 correct?

10 A. What do you mean by "same manner"?

11 Q. They were -- I mean -- I'm not trying to say they made  
12 the same pay or maybe some of them sold more than  
13 others, but I'm -- it's not like -- they're all  
14 compensated in the same manner. They all received a  
15 daily rate pay as a base and then were eligible to  
16 receive additional commissions and bonuses; correct?

17 A. No.

18 Q. Why is that statement incorrect?

19 A. That only applies to the S3Ts.

20 Q. Please don't use the abbreviation for purposes of this  
21 conversation.

22 A. I'm sorry.

23 That only applies -- what you -- what you just  
24 described only applies to the sales and service  
25 specialist trainees.

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1 Q. Okay. What -- what's the difference in the method of  
2 compensation between the sales and service specialists  
3 and the sales and service specialist trainees?

4 A. All of them are paid based on sales commission. Only  
5 the S3Ts have a guaranteed minimum.

6 Q. The guaranteed minimum of what? \$120?

7 A. Correct.

8 Q. And so there's no guaranteed minimum in the -- in the  
9 payment for -- the daily payment for the sales and  
10 service specialists?

11 A. There's no daily payment for the sales and service  
12 specialists. There's -- it's -- it's all just a minimum  
13 amount. And there's no guaranteed minimum for sales and  
14 service specialists.

15 Q. So, what if they delivered no items for the day for  
16 whatever reason, but they were working?

17 They wouldn't get paid anything?

18 A. If they didn't go on the road -- the -- we're talking  
19 about the sales and service specialists?

20 Q. Correct.

21 A. If they didn't go on the road, they -- and they were --  
22 and they -- they did -- but they worked in some other  
23 capacity -- I'm not sure what that would be -- yeah,  
24 they would get paid that -- their daily minimum rate.

25 Q. What -- what is that?

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1 A. Currently, it's \$170.

2 Q. Okay. So, the sales and service specialist trainees get  
3 a -- no matter what happens, they get a daily minimum  
4 rate of \$120 a day, and the sales and service  
5 specialists get a daily minimum rate of a \$170 a day;  
6 correct?

7 A. No.

8 Q. Why not?

9 A. Because the sales and service specialist trainee is part  
10 of their daily -- you know, their day -- their  
11 calculation of commission incorporates that minimum.

12 Q. Right.

13 A. That is not the case with sales and service specialists.

14 Q. So, could they ever -- let me ask you this: Could the  
15 sales and service specialists ever earn less than \$170 a  
16 day?

17 A. For -- not -- not if they work, no.

18 Q. Okay. So, in any day that sales and service specialist  
19 works, they will get, at a minimum, \$170 a day; correct?

20 A. Correct.

21 Q. Okay. And you will agree that, you know, according to  
22 my client, when -- when they're out there working on the  
23 field, they're regularly referred to by the company as  
24 "the drivers"; right?

25 A. By the company? No. The company only officially refers

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1 to them as sales and service specialists and sales and  
2 service specialist trainees.

3 Q. Well, that's not true.

4 When the company officially sends out job postings,  
5 they officially refer to them as "entry-level route  
6 delivery" and "route delivery drivers"; correct?

7 A. I'm not sure a job posting is an official anything.

8 Q. Okay. My question is, the -- the employee -- you are  
9 aware that the managers and employees of the company  
10 regularly refers to these drivers simply as "drivers";  
11 correct?

12 A. I've heard it used.

13 I don't know if I would say "regularly," though.

14 Q. Okay. If you take a look at it on Bates 340.

15 This is an ad for sales service specialist and in  
16 quotation marks it says "route delivery."

17 Do you see that?

18 A. Yes.

19 Q. So, you would agree that the name "sales service  
20 specialist" and "route delivery" is used interchangeably  
21 by the company, by Absopure; correct?

22 A. No.

23 Q. So, why was it used interchangeably in this job posting?

24 A. A job posting is a marketing device.

25 Q. Okay. So, when you try to market people to work at your

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Monday, January 17, 2022

Reported Remotely from

Oakland County, Michigan

12:47 p.m.

\* \* \*

(Deposition resumed pursuant to  
its recess; parties present, same  
as before.)

\* \* \*

THE VIDEOGRAPHER: We are back on the record,  
File 3, 17:47 Universal Time.

\* \* \*

PATRICK FRANCIS BYRNE,  
after having been previously duly sworn, was examined  
and testified further as follows:

EXAMINATION (Continued)

BY MR. HANNA:

Q. All right. Let's take a look at the -- excuse me -- the  
Associate's Employment Handbook.

Before we get started, just to confirm, Patrick,  
you did not speak to your counsel over break, did you?

A. No, I didn't.

Q. Do you speak with any attorneys over break?

A. No.

Q. No.

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1 Let's take a look at the "Associate Employment  
2 Handbook."

3 We're going to -- for the record, we're going to  
4 take a look at Bates 184.

5 And the associate handbook begins on Bates 177.

6 We're skipping to Bate- -- Bates 184, which is page  
7 7 of that document.

8 Okay. Actually, strike that.

9 We don't need to -- let me see.

10 Okay. So, you classified the drivers as daily wage  
11 exempt; is that right?

12 A. Uh-huh.

13 THE REPORTER: I'm sorry --

14 A. The -- the S3Ts.

15 BY MR. HANNA:

16 Q. And those are the delivery drivers we are discussing;  
17 correct?

18 A. The sales and service specialist trainees are classified  
19 as daily wage exempt.

20 Q. And what about the sales and service specialists, the  
21 non- --

22 A. They're -- they're commission exempt.

23 Q. Okay. And that's according to your internal  
24 classification on the -- in the documents; correct?

25 A. Yes.

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1 Q. Okay. And the drivers, they don't receive a -- do they  
2 receive holiday pay?

3 A. I believe they do, yes.

4 Q. Does Absopure offer vacation pay for its drivers?

5 A. Yes.

6 Q. And if they -- if they were to take a vacation day,  
7 they -- they would get their regular day wage for that  
8 vacation day; correct?

9 A. No.

10 Q. What would they get?

11 A. They get the -- they get their average commissioned  
12 earnings for the day.

13 Q. Is that for all driver -- drivers?

14 A. It's only for the sales and service specialists.

15 Q. What about the trainees?

16 A. The trainees get the daily rate.

17 Q. Okay. All right. And Absopure offers flex pay for its  
18 drivers; right?

19 A. Correct.

20 Q. And if you took -- if the driver took a flex day, they  
21 would receive the daily wage rate for that flex day;  
22 correct?

23 A. No. Same as before. The S3's would get their average  
24 commission earnings for that day, and the S3Ts would get  
25 their daily rate.

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1 Q. I'm sorry. Can you answer that question without using  
2 the abbreviations for the record?

3 A. I'm sorry. Can I -- can we start -- can you ask again?  
4 Can we start over?

5 Q. Yeah. I'm talking about the flex pay.

6 What kind of flex pay are the drivers eligible to  
7 receive?

8 So, let's start off with the trainees.

9 What kind of -- do the trainees -- does Absopure  
10 offer flex pay for the trainees?

11 A. You know, I'm not -- the thing I -- I'm not sure because  
12 of the -- the -- the time in which things -- different  
13 benefits kick in. I'm not 100 percent sure what --

14 Q. Can you elaborate on what you mean by that?

15 A. Well, yeah. I mean, there's -- there's -- just in a  
16 general sense, there's like a certain number of days  
17 between -- before, you know, they're eligible for  
18 certain benefits.

19 Q. Sure. I'm -- I'm talking about once they become  
20 eligible for it. I understand what you're saying.

21 A. Right.

22 Yeah, the S3Ts would get their daily rate for a  
23 flex day and the S3s would -- I'm sorry. I'm  
24 abbreviating.

25 The sales and service specialist trainees would get

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1           their average daily rate, and the sales and service  
2           specialists would get their -- the average of their  
3           commission for a day.

4       Q.    Okay. And you have the same alcohol and substance  
5           policy for all -- for all Absopure employees; correct?

6       A.    I believe so, yes.

7       Q.    Okay. All right. It appears from your advertisement  
8           that Absopure essentially requires the drivers to have  
9           the ability to obtain a CDL license; correct?

10      A.    Yes.

11      Q.    Okay. Obviously, you're aware that Plaintiff never had  
12           a CDL license; correct?

13      A.    I --

14      Q.    During his employment.

15            He got -- I believe he may have --

16      A.    Yeah.

17      Q.    -- got it later but I'm talking about during his  
18           employment.

19            You are aware that, during his employment,  
20           Plaintiff never had a CDL license; correct?

21      A.    Yes.

22      Q.    And he was employed at Absopure for about a year and a  
23           half; is that correct?

24      A.    Yes.

25      Q.    And Plaintiff could not drive out of state without a CDL

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1 license; correct?

2 A. No.

3 Q. How was he able to drive out of state with a CDL  
4 license?

5 A. I believe that only applies if he was over the age -- if  
6 he was under the age of 21.

7 Q. So, if he's over the age of 21, he is able to drive out  
8 of state without a CDL license?

9 A. Yes.

10 Q. I'm not talking about like me driving out of state or  
11 you.

12 I'm talking about -- you're talking about driving  
13 for the company as a professional driver?

14 A. That's my understanding, yes.

15 Q. What is he able to drive out of state without a CDL  
16 license? What kind of vehicle?

17 A. He can't drive a CDL vehicle --

18 Q. He --

19 A. -- anywhere.

20 Q. I'm sorry. You said he "can" or "cannot"?

21 A. He cannot. I'm sorry.

22 He cannot drive a CDL vehicle, a vehicle that  
23 requires a CDL, anywhere, in or out.

24 Q. Right.

25 And what are -- what are the vehicles that do not

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1 require a CDL?

2 A. Anything up to 26,000 pounds.

3 Q. So, do you believe he could have drove a vehicle up to  
4 26,000 pounds out -- within interstate commerce, out --  
5 to another state without a CDL license?

6 A. Yes.

7 Q. Okay. And ultimately he never did that during his  
8 employment; correct?

9 A. He did not.

10 Q. Okay. Very good.

11 Let's talk about -- so, there's essentially --  
12 correct me if I'm wrong. There's essentially two  
13 arguments that are leading you to the conclusion that  
14 the drivers are allegedly MCA exempt. There's the  
15 argument about them actually driving from one state to  
16 the next, which we've discussed the licensing for. It  
17 appears that you have a license for that.

18 And the second argument is the intrastate driving,  
19 which we've looked at the license, and you don't have a  
20 license for that with the DOL -- the -- yeah, the DOT;  
21 is that correct?

22 A. That's a lot.

23 I would simply state that we -- our position is  
24 that he's exempt on his Motor Carrier exemption.

25 Q. Okay. And that position is based on two arguments:

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1 One, that the drivers drive the -- strike that.

2 Let's just get into it.

3 Does -- does Absopure have a seniority policy for  
4 preference purposes as it relates to the drivers?

5 A. As far as?

6 Q. As far as like preferred routes.

7 A. No.

8 Q. Are there routes that are high -- more highly sought  
9 after?

10 A. I -- I'm not sure. I -- can you rephrase that?

11 Q. So, the -- there's routes that are obviously a lot  
12 longer than others; right?

13 A. The -- yeah. The routes are various lengths.

14 Q. Yeah.

15 So, there's, for example, routes where some of the  
16 drivers go from Michigan to Indiana, Ohio, and then  
17 there's routes where they go perhaps a few miles from  
18 the actual facility; right?

19 A. Yes.

20 Q. So, why would -- why would anybody want to drive out of  
21 state? What -- what would be the preference -- what  
22 additional compensation would you get for driving out of  
23 state, I guess I should say?

24 A. I don't know.

25 Q. You're not aware of -- so, they get -- they all get

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1 compensated the same regardless of the route distance?

2 A. As far as I know, yes.

3 Q. Okay. I mean, the -- essentially, what -- your  
4 testimony is they're getting paid a minimum amount, and  
5 then they're also getting paid what you referred to as  
6 "commission" for the delivery of goods; rights?

7 A. No.

8 Q. What's incorrect about what I just said?

9 A. They're being paid commission for selling goods to  
10 customers, and the smaller group of S3Ts are --

11 Q. Don't use the abbreviation --

12 A. -- below the minimum.

13 Q. Can you please rephrase that without using the  
14 abbreviation, just for the record, because it's kind of  
15 hard to --

16 A. I know. I'm -- I'm sorry. I'm just --

17 Q. It's your lingo. I get it.

18 A. I know. I'm sorry.

19 The -- can we -- can you re-ask and can we start  
20 over?

21 Q. Okay. So --

22 A. I'm sorry.

23 Q. No, no. You're good.

24 My question was, why -- why would anybody want to  
25 drive out of state if they're only getting paid based on

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1 the commission and, you know -- and the potential  
2 minimum daily rate when they could just drive a route  
3 that's two miles and they could, you know, potentially  
4 sell or whatever to closers customers?

5 Why would you want to spend half a day driving  
6 across a different state?

7 A. I don't know.

8 Q. Do you pay them at all by the -- the mileage they're  
9 driving?

10 A. No. I don't believe so, no.

11 Q. Are they driving larger -- the -- the people that are  
12 going from one state to the next, are they driving  
13 larger -- are they delivering larger shipments?

14 A. It -- it varies.

15 Q. So, in essence, you could have a driver who is driving  
16 two miles from their home, coming back home at  
17 5:00 p.m., as opposed to a driver that's out for  
18 whatever, all day, to go to a different state and coming  
19 back. And that driver going out of state is doing all  
20 this extra driving for the company, and they could end  
21 up getting paid less?

22 A. I don't know. It's hypothetical. I'd have to see it --  
23 you'd have to go -- I don't know.

24 Q. I guess my question to you is, are you aware of any  
25 additional compensation component for these drivers that

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1 are actually regularly scheduled to drive out of state?

2 A. I am not, no.

3 Q. Okay. Okay.

4 Let's take a look at Bates 718 for the record.

5 You don't pay drivers by the mileage at all, do  
6 you?

7 A. No.

8 Q. Okay. So, there is no mileage component.

9 All right. Let's take a look at Bates 718 for the  
10 record.

11 So, I believe we previously talked to the  
12 groupings.

13 And this is the west, north, south and Cost- --  
14 Costco driver groups; correct?

15 A. Yes.

16 Q. Okay. Do you know -- and I'm -- do you know how these  
17 routes are assigned to the particular drivers?

18 A. No.

19 Q. Okay. And just for the record, we talked about the  
20 other three divisions. Costco, is that like one Costco  
21 or several Costcos or what?

22 A. It's several.

23 Q. Okay. Okay. And it appears, in the beginning of his  
24 employment, Plaintiff was assigned Route 11017.

25 Is that correct?

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1                   How does that work?

2     A.     Who is -- who is "they"?

3     Q.     The customer.

4     A.     And that -- and -- you need to be more specific than  
5           that.

6                   What are you --

7     Q.     You said that the invoices are -- the billing date is  
8           the date that the invoices were generated from the  
9           customer; right?

10    A.     Yes.

11    Q.     So, my question is, how were they generated? Do you  
12           have like an online software that they go on and -- how  
13           does that work?

14    A.     They're generated on a handheld computer that the  
15           S3 service -- sorry -- sales and service specialists and  
16           sales and service specialist trainees have with them.

17    Q.     Oh, so -- okay. So, this is the delivery date?

18                   So, this is the driver's -- like, for example, the  
19           first line on Bates 474 is Jeremy Cronenwett, and he  
20           went to Columbia City, Indiana.

21                   Do you see that?

22    A.     Yes.

23    Q.     So, "Billing Date 10-2-17," this is reflective of a  
24           delivery on 10-2-17; is that right?

25    A.     Yes.

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1 Q. Okay. That was my question.

2 And that -- that is generated from a -- the  
3 handheld device where he inputs everything being  
4 delivered at that time to this particular company --  
5 customer; correct?

6 A. Yes.

7 Q. Okay. Very good.

8 And so ultimately he's going there because, I'm  
9 assuming, they preordered a certain amount of products;  
10 correct?

11 A. No.

12 Q. How -- why is he going there?

13 A. As a scheduled visit at a customer on that day.

14 Q. Okay. They have scheduled visits?

15 A. Yes.

16 Q. Okay. And then does he also ask them, "Hey, do you want  
17 more of this product or that product?"

18 A. Among other things, yes.

19 Q. Okay. And do they regularly sell additional products?

20 A. I don't -- I'm not sure what -- what you mean by  
21 "regularly."

22 Q. Sure.

23 So, at that point, he's able to sell additional  
24 products to the extent the customer orders same or  
25 requests same; correct?

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1 A. He can, yes.

2 Q. Okay. And the invoice that would be created would  
3 include all of the items that he delivered to the  
4 customer on that date; correct?

5 A. Correct.

6 Q. And he would get a commission based on all the items on  
7 that list; correct?

8 A. Correct.

9 Q. Okay. What is the reference number?

10 A. That reference number is the number that gets printed on  
11 the customer's invoice in case they want to reference  
12 that specific transaction when they pay.

13 Q. Okay. Very good.

14 What is "Ship to Customer Number"?

15 Is that the -- is that your client customer number?

16 A. Yes.

17 Q. Okay. So, this -- the first one is whoever Customer  
18 948662 happens to be; correct?

19 A. Correct.

20 Q. Okay. All right. And what is -- "Ship to City," I'm  
21 assuming that's the city the customer is located; right?

22 A. That's correct.

23 Q. What is "Shipment"? What is this?

24 A. Ship- -- "Shipment" is the collection of visits for a  
25 given route on a given day.

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1 Q. Okay. So -- okay. So, Mr. Cronenwett went to -- is  
2 that his route number? Is that -- am I saying that  
3 right?

4 A. No.

5 Q. No?

6 A. It -- it is not.

7 Q. Okay. So, in the beginning of the day, I believe they  
8 get like a printout of where they're going for the day;  
9 correct?

10 A. They can, yes.

11 Q. As a -- how else could they get it?

12 Could they get it electronically? Is that what  
13 you're saying?

14 A. They -- typically, they -- a lot of them don't need that  
15 printed list --

16 Q. How do they know where --

17 A. -- because --

18 Q. Go ahead. I'm sorry.

19 A. The customers are in a handheld device.

20 Q. Okay. So, you're saying they might not need to print it  
21 out because their handheld device identifies their route  
22 for the day; is that right?

23 A. Yes.

24 Q. Okay. So, if this -- so, this isn't his like route  
25 number that he regularly takes? This is like a specific

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1 Mr. Acho, I should be right around that time. So, to  
2 the extent I need more, it might be like 10, 15 minutes.  
3 But I'm -- let me -- I'll try to move as fast as I can.

4 MR. ACHO: And then I will not go beyond seven  
5 hours.

6 MR. HANNA: That -- that's up to you. We can take  
7 it to the court and we can bring him back. It will be  
8 up to you to make that decision. I'm not -- I'm not  
9 here to fight anybody. So --

10 BY MR. HANNA:

11 Q. It looks like -- all right.

12 So, this looks like some of the items that Mr. Guy  
13 delivered while working Route 11050?

14 Is that right? On January 6th?

15 A. Yes.

16 Q. And 745 is some of the stuff he did on January 13;  
17 right?

18 A. Yes.

19 Q. Okay. And I believe I've asked this already, but you  
20 have no way of knowing if any of these items are the  
21 items received on Bates 742; correct?

22 A. The items -- the item listed below -- on the documents  
23 below?

24 Q. Yeah. On 744.

25 A. That's correct.

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1 Q. Okay. Let's go to Bates 80 for a second.

2 All right. So, we're going to take a look at Bates  
3 80, which is -- this is a pay stub for Mr. Guy.

4 It shows all the commission he received for the  
5 items that he delivered for that day; correct?

6 It looks like -- yeah.

7 Is that right?

8 A. Is what right?

9 Q. The pay stub would show all the commissions Mr. Guy  
10 received for all the items that he delivered for that  
11 particular period of time; right?

12 A. Yes.

13 Q. Okay. Okay. And at the end of the day of a driver  
14 driving, how do you know all of the items that he  
15 delivered? Is -- is it because he's input all that  
16 information in the handheld?

17 A. Yes.

18 Q. Okay.

19 A. I'm sorry. I should have paused there.

20 Q. You're good.

21 MR. HANNA: And for the -- can I just ask the court  
22 reporter how -- the videographer how long we've been on  
23 the record?

24 THE VIDEOGRAPHER: According to what I -- if you  
25 want to know how much for seven hours of running time,

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1 I've got two hours and 40 minutes left.

2 MR. HANNA: So, we have two hours and 40 minutes.

3 Okay. Very good.

4 THE VIDEOGRAPHER: It's running --

5 MR. ACHO: I believe -- I believe you're mistaken.

6 THE VIDEOGRAPHER: I can give you the exact  
7 times --

8 MR. ACHO: These aren't --

9 THE REPORTER: I'm sorry?

10 MR. ACHO: Wait. These aren't just times when he  
11 questioned, when we've been on the record. That's when  
12 it's supposed to be.

13 MR. HANNA: He is talking about -- that is correct.  
14 You're -- you're incorrectly counting the break time,  
15 Mr. Acho.

16 MR. ACHO: No. No. We only had a 30-minute break  
17 and a five-minute break.

18 We only had 35-minute break. That's it.

19 MR. HANNA: All right. You can take your position.  
20 You can do what you want. I'll seek sanctions and come  
21 back. We've literally had the videographer tell us how  
22 much time we've got left.

23 THE VIDEOGRAPHER: I can give you the exact times  
24 if you'd like.

25 MR. HANNA: Sure. Give --

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1 A. Yeah -- yes. Some customers, yes.

2 Q. Okay. All right. Let's go back to 95.

3 The drivers can't pick which order their routes are  
4 delivered in; right?

5 A. I'm sorry. Can you say that more clearly? I just  
6 missed it.

7 Q. Yeah.

8 They -- I -- I've seen the list -- the -- the  
9 printout that says, you know, "Go to this customer, turn  
10 right here, go straight there, go to this customer.  
11 Take this road," et cetera.

12 So, the drivers, they don't get to pick which order  
13 that they -- they deliver items on their route to;  
14 correct?

15 A. That's incorrect and -- and -- that's incorrect.

16 Q. Okay. I'll show you that document.

17 Are they -- for -- I guess I'm trying to get to  
18 Number 6.

19 What, if anything, can they do to plan efficient  
20 routing each day?

21 A. How -- how long -- how long do you want to be here?

22 So, part of their -- they review each route each  
23 day the day before with their manager, and have input  
24 into that sheet that you see printed out in -- of the  
25 customers in a given order.

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1           So, they -- they can make suggestions, and they can  
2           change the order in which a route is run then.

3           And then further, when they're on the route, that  
4           only serves as a general guideline given a myriad of  
5           circumstances that could arise during the day. The  
6           S3s and S -- the service specialists and service  
7           specialist trainees have the ability to modify as needed  
8           to satisfy customers.

9   Q.   Okay. All right. We've received the pay records for  
10       the Plaintiff, and we haven't received them for anyone  
11       else.

12           But for purposes of our discussion, I believe  
13       Plaintiff's pay and pay records are representative of  
14       the other drivers; right?

15   A.   I don't know.

16           I mean in what regard?

17   Q.   The method of -- the method of compensation.

18           Obviously, everyone gets paid a different amount,  
19       depending on what they've done, but the method of  
20       compensation is the same; correct?

21   A.   For an S3T -- for a sales and service specialist  
22       trainee, yes.

23   Q.   And what is the difference between -- for the sales and  
24       service specialists as far as method of compensation?

25   A.   I'm sorry. For the -- for the trainees?

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1 Q. No. For the specialists, the nontrainees.

2 A. Well, they're all being -- they're -- they're all paid  
3 commission. And I think we covered this earlier, but  
4 I'll repeat it.

5 They -- the difference is that the sales and  
6 service specialist trainee is paid a commission but has  
7 that guarantee as a minimum of \$120 they can make.

8 Q. Okay.

9 A. The sales and service specialists do not have that  
10 minimum amount they can make factored in.

11 Q. We've talked about that, but no matter what happens --

12 A. The -- the end result is no different. I'm just trying  
13 to be clear.

14 Q. Okay. And they're paid a commission for all the items  
15 that they deliver on any given day; correct?

16 A. Yes.

17 Q. Okay. Very good.

18 MR. HANNA: Can we -- how long have we been on the  
19 record?

20 THE VIDEOGRAPHER: Do you want me to add it up  
21 right now?

22 MR. HANNA: Yeah.

23 Can we -- let's go off the record, and can you add  
24 it up?

25 THE VIDEOGRAPHER: Okay.

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1 MR. HANNA: I do have to run to the bathroom, too.

2 THE VIDEOGRAPHER: We're pausing at 19:33:18

3 Universal Time code.

4 (Short recess at 2:33 p.m.)

5 \* \* \*

6 (Record resumed at 2:36 p.m.)

7 THE VIDEOGRAPHER: We are back on the record. File  
8 4, 19:36.

9 BY MR. HANNA:

10 Q. Okay. I see that the drivers also get compensated a  
11 bonus in addition to the commission.

12 What is that bonus for?

13 A. Do you know which -- do you know which one -- do you  
14 know -- what are you referring to?

15 Q. Let me just ask you this: What bonuses are the drivers  
16 entitled to receive other -- let's go back.

17 The commissions they're receiving is for all of the  
18 items they delivered for the day; correct?

19 A. Yes.

20 Q. Okay. So, are they entitled to any additional bonuses?

21 Let me ask it that way.

22 A. Sales and service specialists do have a bonus, yes.

23 Q. For what?

24 A. They have the opportunity to earn an additional  
25 1 percent of their sales less some deductions for

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1 some -- some measured process stuff.

2 Q. Okay. For -- I -- I assume that means referring to if  
3 they sell a specific product here and there.

4 Is that right?

5 A. No. It's -- it's -- effectively it's potentially  
6 1 percent of sales paid out quarterly.

7 Q. Okay. And that accounts for all the deliveries they  
8 made?

9 A. Yes.

10 Q. Okay. I've seen that document.

11 Essentially, they have to sign like a non- --  
12 noncompete agreement, and then they could be eligible  
13 for it; right?

14 A. Yeah. They sign an agreement, and they can be eligible  
15 for it, yes.

16 Q. That's right.

17 On average, do you have any idea as to what  
18 percentage that bonus would account for the average  
19 compensation a driver received?

20 A. Not off the top of my head, no. I'd have to -- no.

21 Q. Okay. And the drivers received benefits -- well, here.  
22 Let me just show you.

23 The drivers received benefits as hourly associates;  
24 is that right?

25 We'll look at Bates 178.

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1           There we go. Drivers received benefits as hourly  
2 associates; is that right?

3 A. I -- I don't -- I don't know. I don't necessarily read  
4 it that way, but --

5 Q. What do you -- how do you read this?

6 A. Well, it says -- I mean, I'm not familiar with this  
7 document. But it does say "hourly and driver benefits."

8 Q. Oh, fair -- fair point. I misread it.

9           Okay. And the -- the -- the compensation that they  
10 receive, it's intended to cover a 40 -- they weren't  
11 paid overtime -- the -- let me just ask you: The  
12 drivers were not paid a time-and-a-half premium for  
13 their overtime hours worked; correct?

14 A. Correct.

15 Q. Okay. So, the total compensation that they received is  
16 intended to cover the drivers for a 40-hour work week;  
17 correct?

18 A. Say that again.

19 Q. The total compensation that any driver would have  
20 received was intended to cover them for a 40-hour work  
21 week; right?

22 A. The compensation they received was intended to pay them  
23 based upon the commission they generated on their sales.

24 Q. For -- I know. I -- I understand that.

25           And it was intended to cover compensation for a

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1 40-hour work week?

2 A. I -- I don't think so. I don't know. No.

3 Q. It was not intended to cover their compensation for --

4 A. It's --

5 Q. Go ahead.

6 A. But it's -- it's incentive. It's the commission they  
7 generate from their sales.

8 Q. Okay. So, give me one second.

9 I'm just trying to look up something.

10 MR. ACHO: Do you need a break?

11 MR. HANNA: No. I -- I just need to figure out  
12 something. I don't want to waste time. Just give me  
13 one second.

14 Thank you, though.

15 Do you know what? I'm sorry. Yes. Why don't we  
16 just take a two-minute break.

17 THE VIDEOGRAPHER: Okay. We're pausing.

18 (Short recess at 2:42 p.m.)

19 \* \* \*

20 (Record resumed at 2:44 p.m.)

21 THE VIDEOGRAPHER: We are back on the record,

22 19:44.

23 BY MR. HANNA:

24 Q. Okay. So, Patrick, in the beginning of the -- I -- I  
25 didn't ask you this earlier, but in the beginning of the

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1           workday, do they -- the drivers, when they're -- when  
2           they have the list of the day, that they need to go to  
3           Customer X, Y, Z, do they have like some kind of  
4           indication or estimation as to how much this -- products  
5           they should bring for this customer?

6       A.    Yes.

7       Q.    Okay. And when was that -- okay.

8                    So, they get -- they get a list saying Customer X,  
9           Y, Z typically wants 20 items of Product A, 30 items of  
10          Product B, et cetera; is that right?

11      A.    Yes.

12      Q.    Okay. Okay. Let's take a look at -- let's take a look  
13          at Bates 90.

14                   So, this -- for the record, we're looking at  
15          Defendant's Bates 90.

16                   So, this is the pay for Plaintiff, for example, and  
17          it looks like this is the compensation he received for  
18          that year.

19                   Do you see that? The year-to-date?

20      A.    Yeah. Yes.

21      Q.    Okay. So, for -- for 2019, for example, it appears the  
22          Plaintiff received \$30,000 as -- \$30,600 as regular pay;  
23          right?

24      A.    (No verbal response.)

25      Q.    Is that correct?

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1 Hello? Can you hear me?

2 A. Yes.

3 Q. Okay. And it appears that he received \$14,947.05 for  
4 commission; right?

5 A. Yes.

6 Q. And \$600 for holiday pay; right?

7 A. Uh-huh.

8 THE REPORTER: I'm sorry. Is that --

9 BY MR. HANNA:

10 Q. And --

11 THE REPORTER: Is that "yes"? Sorry.

12 A. Yes.

13 I'm sorry.

14 THE REPORTER: Thank you.

15 BY MR. HANNA:

16 Q. And an additional \$186 in bonus.

17 Do you see that?

18 A. Yes.

19 Q. What is that bonus for? Do you know?

20 A. I -- no, I'd be -- I'm not sure what maps to what line  
21 on here exactly. I'm not sure.

22 Q. Okay. And he says he gets -- he got \$203 for "H20  
23 commission."

24 Do you know what that's for?

25 A. No.

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1 Q. Okay. I believe we've established this already, but you  
2 do not pay the drivers an overtime premium for hours  
3 worked over 40; correct?

4 A. That's correct.

5 Q. And I'm -- I'm wrapping up, but I just want to make sure  
6 we -- we've -- I've received this.

7 You believe you've provided the -- the name of all  
8 drivers employed in Michigan in your answer -- in your  
9 answers to discovery; right?

10 A. Yes.

11 Q. Okay. Okay. Let's take a look at the "Driver Handbook"  
12 real quickly, which begins on Bates 98.

13 Do you know who created -- drafted this document?

14 A. The "Driver --" no, I don't.

15 Q. Okay. So, is it your position, for the record, that  
16 the -- this driver's handbook -- which is, for the  
17 record, Bates 98 to 116, that this is a driver handbook  
18 provided to all of Absopure's drivers in Michigan from  
19 2017 to present; correct?

20 A. Yes.

21 Q. And there's no other versions of this document; right?

22 A. Not -- not that I'm aware of, no.

23 Q. Okay. I -- I don't see a cover page, but I believe it  
24 starts with his policy statement and then the pages are  
25 numbered.

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1           Okay. Bates 98.

2           What is -- what is the "Fleet Safety Program"?

3           Do you know what a Fleet Safety Program is?

4   A.    I believe it's referring to this document, itself, but  
5        I -- I don't know.

6   Q.    Okay. Have you spoken to any of the drivers about this  
7        lawsuit employed by Absopure?

8   A.    No.

9   Q.    Has anybody for or on behalf of Absopure spoken to any  
10       of the drivers about this lawsuit?

11   A.   I wouldn't know.

12   Q.   Okay. Do you have any evidence one way or another  
13       concerning their desire to join?

14   A.   No, I -- I don't know.

15   Q.   Okay. And just to wrap -- wrap things up, as far as  
16       your defenses go, you believe all of the truck drivers  
17       in Michigan are exempt under the Motor -- Motor Carrier  
18       Act exemption based on the same reasons we discussed  
19       earlier; correct?

20   A.   Yes.

21   Q.   Okay. All right. Do you know who made the decision to  
22       classify the drivers as exempt?

23   A.   Who?

24        No.

25   Q.   It was just -- it was just there when you got there,